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**IN THE
COURT OF APPEALS OF INDIANA**

FREDRICK EDMOND,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 45A03-0610-CR-487

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0506-MR-00010

JUNE 8, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Fredrick Edmond (“Edmond”) brings this direct appeal from his conviction by a jury of the Class A felony of voluntary manslaughter, the Class A felony of attempted murder, and the Class C felony of attempted battery. Edmond was found guilty at a bench trial of being a habitual offender. Edmond received a one hundred and ten year sentence.

We affirm.

ISSUE

Edmond states the issue as:

Was there sufficient evidence of a matter of law to support the jury’s verdict convicting the defendant of the criminal offense of Voluntary Manslaughter, a Class A felony, and Attempted Murder, a Class A felony, thereby rebutting the defendant’s self-defense claim?

FACTS

The facts viewed in a light favorable to the judgment show that Cher Steward and Edmond were in a relationship and lived together after their twin children were born. They separated and an arrangement was reached whereby Edmond (actually his mother) had custody of the children.

Cher spent the night at the home of Alexis Hamilton as did Shawnquella Williams. The next day the three women left the house. Cher was driving Alexis’ mother’s car, with Alexis in the front passenger seat, and Shawnquella sitting behind Alexis. They stopped at a McDonald’s and then bought some marijuana.

After driving around, they spotted Edmond's car. Cher stopped and walked to the driver's side window and she and Edmond talked of the children. There was a restraining order in effect which limited Cher's contact with Edmond. Also in Edmond's car was a woman named Ashley who was sitting next to Edmond. As Cher and Edmond talked, Ashley leaned over and rolled up the car window. Edmond rolled the window back down. Ashley made a comment about taking care of Cher's children. Cher made a verbal attack of Ashley, who in turn got out of the car, and a physical altercation occurred between the two. After two or three minutes, Alexis and Shawnquella broke up the fight and convinced Cher to return to their car. As they left, Cher threw a glass orange juice bottle, hitting Edmond's car hood.

Cher drove to her house and was claiming to "bust out" Edmond's windows. She went into the house, returned with a hammer, and then headed back to Edmond's house. Cher, Alexis, and Shawnquella remained in the car in the positions previously described.

Cher pulled up next to Edmond's now unoccupied vehicle. Cher got out and tried to break a front passenger window and failed. She did succeed in breaking out a rear passenger side window before hurrying back to her car. As they prepared to leave, one of the women cried out that Edmond was standing at the right front of the car and pointing a .45 caliber pistol at them. Four to seven shots were fired by Edmond in rapid succession as Cher sped away.

Cher stopped briefly and discovered blood coming from Alexis' mouth. Cher went around the corner and again stopped, and she then saw that blood was gushing from Alexis' mouth. Shawnquella ran to a neighbor's house and had them call the police while

she called Alexis' mother. Cher jumped out of the car and threw away the marijuana and the hammer.

Alexis had been shot three times, with the fatal shot entering her back, perforating her right lung, tearing her ascending aorta, and exiting through her left breast. The bullet and casings were from a .45 caliber pistol and were fired from the same weapon. Except for the hammer, there were no deadly weapons in Cher's car.

During the trial, Shawnquella testified that she had told Cher, after the shooting started, to run over Edmond with the car. Other evidence showed that Edmond was never in front of the car.

Edmond rested without putting on witnesses or introducing evidence.

Additional facts will be disclosed as needed.

DISCUSSION AND DECISION

When considering a challenge to the sufficiency of the evidence to support a conviction, we respect the fact-finder's exclusive province to weigh conflicting evidence, and therefore we neither reweigh the evidence nor judge witness credibility. *Gleaves v. State*, 859 N.E.2d 766, 769 (Ind. Ct. App. 2007). We consider only the probative evidence and reasonable inferences supporting the verdict, and must affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Id.*

When reviewing a sufficiency question of whether the State met its burden in rebutting the defendant's claim of self-defense, we use the same standard as for any other

sufficiency question. *Pinkston v. State*, 821 N.E.2d 830, 841 (Ind. Ct. App. 2004), *trans. denied*.

A valid claim of self-defense is a legal justification for an act that is otherwise defined as “criminal.” To prevail on such a claim, the defendant must show that he: (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm. An individual is justified in using deadly force only if he “reasonably believes that that that force is necessary to prevent serious bodily injury to himself or to a third person.” The amount of that an individual may use to protect himself must be proportionate to the urgency of the situation. When a person uses more force than is reasonably necessary under the circumstances, the right of self-defense is extinguished. Additionally, when a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. The State may satisfy its burden by either rebutting the defense directly or relying on the sufficiency of the evidence in its case-in-chief.

Pinkston, 821 N.E.2d at 842. (Citations omitted.)

During the State’s case, there was no evidence that Edmond had a reasonable fear of death or great bodily harm as required by *Pinkston*. Edmond rested without putting on evidence, so there was no evidence from that source to show that he was in fear of death or great bodily harm. Even so, the trial court instructed the jury on self-defense.¹ During

¹ INSTRUCTION NO. 23: The defense of self-defense is defined by law as follows:

A person is justified in using reasonable force against another person to protect himself or a third person from what he believes to be the imminent use of lawful force. However, a person is justified in using deadly force only if he reasonably believes that deadly force is necessary to prevent serious bodily injury to himself.

The State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense.

INSTRUCTION NO. 24: It is well settled that a defendant need only raise the issue of self-defense so that a reasonable doubt exists. The State then carries the burden of negating the presence of one or more of the necessary elements of self-defense:

- 1) that the defendant acted without fault;
- 2) was in a place where he had a right to be in relation to his alleged assailant;
- 3) acted in reasonable fear or apprehension of death or great bodily harm.

The questions concerning the existence of the imminent use of unlawful force, the necessity or apparent necessity of using force, as well as the amount of force necessary to repel an attack, can be determined only from the

closing arguments there was considerable discussion, especially by the defense, about self-defense. The jury was also correctly instructed that the arguments of counsel are not facts and that facts must come from the witness stand.

Edmond's argument is that Cher had thrown a glass bottle at him, left and returned with a hammer with which she intended to break out a window of Edmond's car or house; that Edmond was in a place where he had a legal right to be; and, that he was in real danger causing him to fear death or great bodily harm. In large measure, Edmond's argument seeks to have the court on review reweigh the evidence and assess the credibility of the witnesses.

The evidence the jury heard shows that Edmond was never in front of Cher's car and therefore was not in danger to the extent of fearing death or great bodily harm; that Cher was not trying to run over Edmond with her car; that Edmond was standing within a foot of the front passenger door of the car when he fired the shots; that Alexis posed no

standpoint of the defendant at the time and under all existing circumstances. In the exercise of self-defense, the defendant ordinarily is required to act immediately, without time to deliberate and investigate. In such circumstances, the danger which exists only in appearance is to him as real and imminent as if it were actual.

The important inquiry is: Was the danger actual to the defendant's comprehension? It is not whether an injury was actually intended by the assailant, but whether it presented a danger from the defendant's point of view under the circumstances.

INSTRUCTION NO. 25: A person in the exercise of the right of self-defense must act honestly and conscientiously.

When all danger and all apparent danger of the loss of life or of receiving great bodily harm from the assault of his assailant is at an end and passed, then the right to use force is at an end and should cease. The person exercising the right of self-defense must honestly believe and have reasonable ground to believe, when he makes use of force to protect himself from an assailant, that at the time he used force it is then necessary to do so to protect his life or to protect his person from great bodily harm.

One who is in apparent danger and who apprehends no danger and who has no reasonable ground for such apprehension cannot kill or assault another and successfully interpose the defense of self-defense.

INSTRUCTION NO. 26: With respect to property other than a dwelling. The Defendant may use reasonable force, but not deadly force, against another person if the Defendant reasonably believes that the force is necessary to immediately prevent or terminate the other person's criminal interference with property belonging to the Defendant.

threat to Edmond; that Edmond shot Alexis in the back; that Edmond either provoked or participated in the violence; and, that Edmond used deadly force to protect personal property.

The jury heard sufficient evidence to negate any claim Edmond makes relating to self-defense.

CONCLUSION

There was sufficient evidence as a matter of law to support the jury's verdict and the State's evidence sufficiently rebutted the defendant's self-defense claim.

Judgment affirmed.

FRIEDLANDER, J., and NAJAM, J., concur.